

Appl. No. : 09/892,900  
Filed : June 26, 2001

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### REMARKS

In response to the Office Action mailed March 31, 2006, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 14-17, 19, 23, 24, 30, 33, and 36 remain pending. No claims have been canceled. Claims 14, 19, and 23 have been amended and new Claims 37-39 have been added.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~, and additions are underlined.

#### Claims 14-17, 19, 23, 24, 30, 33, and 36 Are Allowable

Claims 14-17, 19, 23, 24, 30, 33, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bau. Applicants respectfully submit that Claims 14-17, 19, 23, 24, 30, 33 and 36 are allowable over the cited prior art and request reconsideration and allowance of the same.

As an initial matter, the Examiner has taken the position in regard to the recitation in Claims 14, 19 and 23 that the displacement of the platen in a first direction is about one-fourth of a dimension in the perpendicular direction, that the limitation is disclosed in the Bau reference in Figures 2 and 4. Applicants submit that there is no explicit disclosure relating the dimension of the displacement to a perpendicular dimension. Moreover, as per M.P.E.P 2125, proportions of features in drawings are not evidence of actual proportions when drawings are not noted to be to scale. As a result, it cannot be concluded that simply because the drawings may depict a perpendicular distance less than a displacement that this is evidence of the claimed limitation. Furthermore, even if the proportions of the drawings were used, the relationship between the perpendicular dimension and the displacement dimension suggested by the cited reference would not be approximately one-fourth. Applicants submit that the displacement of the platen may be approximately equal to, or perhaps slightly less than, a perpendicular distance, but it is clearly not approximately one-fourth.

The Examiner has also taken the position that because the Bau reference discloses that the spring exerts a force throughout its range of motion that it is necessarily and inevitably less than a free length of the spring. Applicants submit that the spring exerting a force throughout its

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entire range of motion is not explicitly disclosed by the reference. Applicants submit that the reference does disclose that the spring will pressurize the fluid and that the plunger is loaded by the spring, but nowhere does the reference suggest that there is a specific amount of the free length of the spring to be utilized as a working length. Furthermore, Applicants submit that it is entirely possible and consistent with the disclosure that the spring in the Bau reference is precisely at its free length when the bag is fully compressed. It is not necessary the case that the spring is less than free length in its fully extended orientation within the Bau dispenser.

The Examiner has also taken the position that instant application has not explicitly described the invention of the scope claimed as having a recognized result. Applicants submit that the elected species was tested and the test results were disclosed in the application on pages 52-54, as well as in Figures 56-60. This disclosure clearly shows in the results of the experiment that the elected species has a recognized result of providing a surprisingly stable fluid flow rate over the dispensation cycle.

For at least these reasons Applicants submit that Claims 14-17, 19, 23, 24, 30, 33, and 36 are supported by the application as filed and are allowable over the Bau reference. However, to expedite allowance of the present application, Applicants have amended independent Claims 14, 19, and 23 to address the Examiner's comments, as described below.

Claims 14-17, 19, 23, 24, 30, 33, and 36 are now in condition for allowance

Applicants still respectfully maintain that the Examiner's grounds for rejections set for in the outstanding Office Action are incorrect. However, in order to expedite allowance, Applicants have elected to amend Claims 14, 19, and 23. Claims 14, 19, and 23 have been amended to recite, among other recitations, that the spring rate and working length of the at least one spring, the platen and the interior surface are configured to compress the fluid delivery bag to expel fluid therefrom when the platen is moving in the first direction such that an outlet pressure of the fluid is substantially constant over substantially the entire dispensation cycle of the infusion pump. As explained in the prior responses, the Bau reference does not disclose or suggest configuring components of the dispenser to achieve a substantially constant fluid outlet pressure over substantially the entire dispensation cycle.

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These amendments are fully supported by the original specification. Applicants specifically point to Table 1 and Table 2 on pages 53 and 54 respectively and in Figures 57-60. These tables show that when the elected species was built and tested that the results were as claimed with a substantially constant fluid pressure throughout the majority of the dispensation cycle and, in the illustrated embodiment, at least the first 90% of the dispensation cycle. Furthermore this concept of substantially constant fluid pressure over a dispensation cycle is also recited throughout the application.

For at least these reasons Applicants submit that Claims 14, 19, and 23 are now allowable over the prior art of Bau and respectfully request reconsideration and allowance of the same. Dependent Claims 15-17, 24, 30, and 33 are allowable not only because they depend from allowable Claims 14, 19, and 23, but on their own merit as well.

New Claims 37-39 Have Been Added.

New Claims 37-39 have been added to recite that the fluid pressure does not fluctuate more than 10 percent during the first 90 percent of the dispensation cycle. These new Claims are allowable not only because they depend from allowable Claims but on their own merit as well. Claims 37-39 are also fully supported at least by the application in Tables 1 and 2 on Pages 53 and 54 respectively and Figures 57-60.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss C. Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.


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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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